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Application No.: 10/798,541

Inventor(s): Michael J. Gray et al

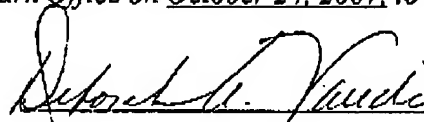
Filed: March 11, 2004

Docket No.: 8135 / Z-03368

Confirmation No.: 6481

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/798,541
Inventor(s) : Michael Gray
Filed : 03/11/2004
Art Unit : 3724
Examiner : Michalski
Docket No. : 8135 / Z-03368
Confirmation No. : 6481
Customer No. : 27752
Title : Shaving Razor With Trimming Blade

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on July 9, 2007.

A timely Notice of Appeal was filed on September 11, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Gillette Company of Boston, MA.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 2, 3 and 5- 15 are pending.
Claims 2, 3 and 5 - 15 are rejected.
Claims 2, 3 and 5 - 15 are appealed.
Claims 1 and 4 have been cancelled.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 2 of the present invention is directed to a shaving razor 10 with a housing 20 having a primary guard 22 at the front of the housing and a primary cap 24 at an upper surface of the back of the housing. This is set out on page 3, lines 15-21 of the specification and in Figure 16. One or more primary shaving blades are positioned between the primary guard 22 and primary cap 24. This is set out on page 3, lines 15-21 of the specification and in Figure 16. A trimming blade 504 is mounted at the back of the housing 20 and has a cutting edge 536 oriented away from the upper surface. This is set out on page 3, lines 20-26 and page 4, lines 11-24 of the specification and in Figure 3. An elongated handle 14 having a first end and second end with a finger pad 726 at the first end on the same side as the primary blades. This is set out on page 1, lines 24-29 of the specification and in Figures 15 and 16.

Claim 3 of the present invention is directed to the handle being bifurcated adjacent the first end into two portions 722, 724, creating a region between the two portions. The portions 722, 724, are joined at the first end to enclose the region. This is set out on page 1, lines 1-6 of the specification and in Figure 16.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 2, 3 and 5-15 are indefinite under 35 USC §112, second paragraph.
2. Whether claims 2, 9, 12, 13 and 14 are anticipated under 35 USC §102(b) by Rozenkranc (US 6,276,061).
3. Whether claims 3 and 5 - 15 are unpatentable under 35 USC §103(a) over Rozenkranc in view of Gilder (US 5,533,263) or in view Bosy (6,598,303) or in view of "Platinum Mach 14".
4. Whether claims 2, 3, 5-11 and 13-15 are unpatentable under 35 USC §103(a) over Braginetz (US 3,934,338) in view of Shurtleff et al. (US 5, 687,485) and Kohring et al. (USD 446,884).

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5. Whether Claims 7 and 12 are unpatentable under 35 USC §103(a) over Braginetz (US 3,934,338) in view of Shurtleff et al. (US 5, 687,485) and Kohring et al. (USD 446,884) as applied to claims 2,3, 5-11 and 13-15 above, and further in view of Rozenkranc (US 6,276,061) and Apprille Jr. (US 5,787,586).

ARGUMENTS

1. Rejection under 35 USC §112, second paragraph.

The terms "a first end", "said first end", and "the first end" are said to be indefinite.

In response to the 112 rejection, the applicant would like to draw attention to the unconventional interpretation the Office Action has taken of the term "said first end" with respect to the accompanying 102 rejection under Rozenkranc. On page 4 of the 7/9/2007 Office Action, one will find a finger pad in the middle of the handle of Rozenkranc that is said to be "at said first end". This unconventional interpretation by the Office Action is simply incorrect.

The term "a first end" has its normal meaning in the present application. That is, it includes that portion of the handle as seen from an end view which would be somewhat oval in shape as depicted in Fig. 2 of the present application and the portions of the handle as seen from the side view that are near or adjacent the oval end. There is nothing unclear about this meaning. The one thing that is clear is that the term "a first end" does not extend to the middle of the razor as is being proposed by the Office Action.

2. Rejection under 35 USC §102(b) over Rozenkranc (US 6,276,061).

Claims 2, 9, 12, 13 and 14.

Rozenkranc fails to anticipate Independent 2. Claim 2 recites that the finger pad is "at said first end" of the handle, i.e., the end of the handle that is secured to the housing. See, for example, the positioning of finger pad 726 in Fig. 16 of Applicant's specification. There is clearly no finger pad in this position on Rozenkranc's handle. The position on the handle of Rozenkranc that the Office Action alleges has a finger pad is approximately halfway between the first end and the second end of Rozenkranc's handle. That is, the

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alleged finger pad of Rozenkranc is positioned in the middle of the handle and not at the end.

The importance of the position of the finger pad at the first end is set forth in the specification at page 6, lines 18-21. When using the trimmer blade 504, the user can place his finger on the finger pad in line with and directly under the trimming blade. The close proximity of the finger pad to the trimming blade ensures accurate trimming. In contrast, the pad of Rozenkranc is anything but close to the trimming blade creating a less than desirable result.

The Examiner has also raised an alternative position for rejecting the same claims in view of Rozenkranc. This alternative position is that a finger pad may mean any surface that a finger rests upon.

Claim 2 requires a handle "having a finger pad". This is a distinct element that differentiates itself from the remainder of the surrounding handle. The Office Action is correct in that a user may rest a finger on the first end of the handle of the Rozenkranc razor. However, a user will not be able to rest his finger on a finger pad at the first end of the Rozenkranc razor because the Rozenkranc handle does not have a finger pad at its first end.

Thus, Rozenkranc fails to anticipate independent claim 2.

Claims 9, 12, 13 and 14 stand or fall with claim 2.

3. Rejection under 35 USC §103(a)

3. A. Claims 6 – 14

As mentioned above in section 2 Rozenkranc fails to anticipate independent Claim 2. Neither Gilder, Bosy nor Platinum Mach 14 when combined either collectively or individually with Rozenkranc establish a prima facie case of obviousness. Neither Gilder, Bosy nor Platinum Mach 14 provide the missing elements of Rozenkranc as mentioned in section 2. Accordingly, claim 2 is patentable over all of these combinations. Claims 6 - 14 in their dependence from independent claim 2 stand or fall with claim 2.

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3. B. Claims 3, 5, 7 – 13 and 15.

Claim 3 recites that the handle be bifurcated into two portions such that there is a region between the two portions and the two portions be joined at the first end to enclose the region defined by the two portions. This is clearly not the case in the Gilder reference, which is cited to supply a teaching of the claimed bifurcated handle. The Office Action relies on a separate member from the handle, i.e., the cartridge, to join the two portions of Gilder's handle. Thus, it is the handle plus the cartridge that is forming the enclosed structure of Gilder and not the handle alone as claimed. The Office Action acknowledges that Rozenkranc does not teach a bifurcated handle. Thus, neither Rozenkranc nor Gilder teaches or suggests a handle having the claimed bifurcated construction.

Accordingly, the combination of Rozenkranc and Gilder does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of independent claim 3. As such, claim 3 is patentable over the combination of Rozenkranc and Gilder.

The combination of Rozenkranc, Gilder and Bosy does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 3. Bosy does not provide the missing elements of Rozenkranc and Gilder mentioned above. As such, claim 3 is patentable over the combination of Rozenkranc, Gilder and Bosy.

The combination of Rozenkranc, Gilder and "Platinum Mach 14" does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 3. "Platinum Mach 14" does not provide the missing elements of Rozenkranc and Gilder mentioned above. As such, claim 3 is patentable over the combination of Rozenkranc, Gilder and "Platinum Mach 14".

Claims 5, 7 – 13 and 15 in their dependence from independent claim 3 stand or fall with claim 3.

4. Rejection under 35 USC §103(a)

Claims 2, 3, 5-11 and 13-15

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4.A. Claims 2 and 6-11 and 13-14

The combination of Braginetz, Shurtleff and Kohring fails to render obvious claim 2 as it does not establish a *prima facie* case of obviousness. Even if one were to combine Braginetz, Shurtleff and Kohring as suggested in the Office Action, the finger rest 30 of Shurtleff is on the opposite side of the primary blades and not the same side as required by the claims. There would simply be no motivation to switch the position of the finger rest 30. As such, claim 2 is patentable over the combination of Braginetz, Shurtleff and Kohring.

Claims 6-11 and 13-14 in their dependence from independent claim 2 stand or fall with claim 2.

4.B. Claims 3, 5, 7-11, 13 and 15

Claim 3 recites that the handle be bifurcated into two portions such that there is a region between the two portions and the two portions be joined at the first end to enclose the region defined by the two portions. This is clearly not the case in the handles of Shurtleff or Kohring, which both rely on a separate member from the handle, i.e., the cartridge, to join the two portions of the handle. Thus, it is the handle plus the cartridge that is forming the enclosed structure and not the handle alone as claimed. Thus, neither Shurtleff nor Kohring teach or suggests a handle having the claimed bifurcated construction. As such, claim 3 is patentable over the combination of Braginetz, Shurtleff and Kohring.

Claims 5, 7-11, 13 and 15 in their dependence from independent claim 3 stand or fall with claim 3.

5. Rejection under 35 USC §103(a)

The combination of Braginetz, Shurtleff, Kohring, Rozenkranc and Apprille fails to render obvious either claim 2 or 3 as it does not establish a *prima facie* case of obviousness. The addition of Rozenkranc and Apprille to the combination of Braginetz, Shurtleff and Kohring fails to supply the missing elements mentioned above in section 4. As such, claims 2 and 3 are patentable over the combination of Braginetz, Shurtleff, Kohring, Rozenkranc and Apprille.

Claims 7 and 12 in their dependence from independent claims 2 and 3 stand or fall with claims 2 and 3.

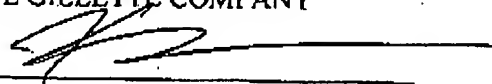
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SUMMARY

In view of all of the above, it is respectfully submitted that the claims be allowed on appeal.

Respectfully submitted,

THE GILLETTE COMPANY



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CLAIMS APPENDIX

2. A shaving razor comprising
a housing having a primary guard at a front of said housing and a primary cap at an upper surface at a back of said housing, one or more primary shaving blades between said primary guard and said primary cap,
a trimming blade mounted at the back of said housing having a trimming blade cutting edge oriented away from said upper surface, and
an elongated handle having a first end secured to said housing,
said handle having a finger pad at said first end on the same side as said primary blades.
3. A shaving razor comprising
a housing having a primary guard at a front of said housing and a primary cap at an upper surface at a back of said housing, one or more primary shaving blades between said primary guard and said primary cap,
a trimming blade mounted at the back of said housing having a trimming blade cutting edge oriented away from said upper surface, and
an elongated handle having a first end secured to said housing,
said handle being bifurcated adjacent said first end into two portions such that there is a region between said two portions, the two portions joining at the first end to enclose the region.
5. The shaving razor of claim 3 wherein said handle has a finger pad at said first end on the same side as said primary blades.
6. The shaving razor of claim 2 wherein said handle is bifurcated at said first end into two portions such that there is a region between said two portions, the region being positioned to provide access to the finger pad.

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7. The shaving razor of claim 2 or 5 wherein said finger pad is made of elastomeric material.
8. The shaving razor of claim 2, 5 or 6 wherein said handle has relieved surfaces positioned to provide access to said finger pad.
9. The shaving razor of claim 2 or 3 wherein there are three or more said primary shaving blades.
10. The shaving razor of claim 2 or 3 wherein there are four or more said primary shaving blades.
11. The shaving razor of claim 2 or 3 wherein there are five or more said primary shaving blades.
12. The shaving razor of claim 2 or 3 wherein said housing is pivotally connected to said handle by a connection that has an at rest stop position to prevent pivoting of said housing when the trimming blade is cutting hair.
13. The shaving razor of claim 2 or 3 wherein said handle has a curve at said first end that is concave on the same side as said primary blades.
14. The shaving razor of claim 2 wherein said finger pad is generally oval in shape.
15. The shaving razor of claim 3, further comprising a finger pad positioned where said two portions join at the first end.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None